IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1872 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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USHABEN VERSHIBHAI VAGHARI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 1872 of 2001

MS DR KACHHAVAH for Petitioner No. 1

MR K.T.DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 18/09/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Rajkot

City, Rajkot, vide order dated February 15, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention order dated February 15, 2001 manifest that the petitioner is a prohibition bootlegger within the meaning of Section 2(b) of the Act and four cases under the prohibition Act registered against the petitioner are still pending for trial. Besides this, statements of two witnesses are recorded and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, powers under Section 9(2) of the Act were exercised by the detaining authority by not disclosing the names of the witnesses as they expressed fear in disclosing their names to the petitioner/detenu and accordingly detained the petitioner/detenu.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ or order quashing and setting aside the impugned order of detention and setting him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. Ms D.R.Kauchwah, learned advocate for the petitioner has restricted her arguments to the fact that subjection satisfaction recording by the detaining authority under Section 9(2) of the Act cannot be considered as genuine. In order to substantiate her arguments she contended that the detaining authority has not supplied the legible copies of the documents relied upon by him while passing the impugned order and on this ground alone this petition deserves to be allowed as the right of the petitioner to make an effective representation is jeopardized. She has further contended that privilege claimed under Section 9(2) of the Act for not disclosing the identities of the witnesses is not genuine in the absence of reply affidavit filed by the detaining authority. She, therefore, urged to allow the petition and prayed to set the petitioner at liberty forthwith.

5. Mr. K.T.Dave, learned AGP appearing on behalf of the respondent State has opposed the petition. He, however, does not dispute the factual aspect about non-supplying of the legible copies of the documents by the detaining authority. He also conceded that affidavit in reply is not filed. However, in order of detention,

detaining authority has assigned the reason for not disclosing the identities of the witnesses as they expressed their fear in disclosing their names to the detenu. He, therefore, urged to pass appropriate order in the light of settled principles enunciated by this Court.

6. A similar question arose in the case of VIKRAMSINH PRAVINSINH RANA V. STATE OF GUJARAT - 1988 (2) GLH 414. In that case some of the pages of the judgement supplied to the petitioner/detenu are not legible and Division Bench of this Court has held that it would amount to non-communication of the grounds and it also adversely affected the right of the petitioner's of making an effective representation to the concerned authority and therefore, order of detention was quashed and set aside.

7. Applying the facts of the aforesaid case to the facts of the present case, at the cost of repetition be it stated that some of the pages, more particularly page nos. 25, 39, 63 and 81 of the documents relied upon by the petitioner, supplied by the detaining authority, are illegible and therefore, it can be said that non-supplying of the legible copies has seriously prejudiced the right of the petitioner's making an effective representation and on this ground order of detention stands vitiated.

8. So far as the other ground, that is the statements of two witnesses are concerned, privilege is claimed by the detaining authority by not disclosing the names of the witnesses as they expressed their fear if their names are disclosed to the detenu. However, the detaining authority has not supported the said aspect by filing reply affidavit and therefore, it cannot be said that the privilege claimed by the detaining authority is genuine and therefore, on the aforesaid two grounds order of detention vitiated and the petition deserves to be allowed.

9. In this connection it would be profitable to refer to the judgement of the Division Bench of this Court in the case of Kajalben G Sindhi V. Commissioner of Police, Ahmedabad & Others - 2000 (1) GLH 320. In the said case this Court after quoting the judgement of Division Bench of this Court in Bai Amina V. State of Gujarat (1981) 22 GLR 1186, has held that the detaining authority himself has to satisfy that apprehension expressed by informant is honest, genuine and reasonable in the circumstances of the case. General background

character, antecedents, criminal tendency or propensity, etc. of the detenu and such of those matters as are relevant in the context of the informant must be inquired into and carefully examined by the detaining authority with a view to satisfying itself that the alleged apprehension is not imaginary or fanciful or that it is not merely an empty excuse invented by the informant.

10. Ratio laid down by this court in the aforesaid judgement squarely covers the facts of the present case. In the instant case also, as stated in earlier paragraphs of this judgement, the detaining authority has not filed affidavit in reply as to under what circumstances privilege is claimed by not disclosing the names of the witnesses. Therefore, on this ground also order of detention stands vitiated.

11. Seen in the above context, the detention order is vulnerable, bad in the eyes of law and therefore liable to be quashed and set aside by allowing the petition.

12. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated February 15, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*